

City of Lee's Summit

Development Services Department

January 15, 2021

TO: Board of Zoning Adjustments
FROM: Hector Soto, Jr., Planning Manager
RE: **PUBLIC HEARING – Application #PL2020-385 – Variance to Unified Development Ordinance (UDO) Article 6, Section 6.040, Table 6-3, Rear Yard Setback – 1727 NE Aberdeen Dr; Engineering Solutions, LLC, applicant**

Recommendation

The Development Services Department recommends **DENIAL** of a variance to the minimum 30' rear setback requirement for a covered deck in the R-1 zoning district.

Request

Variance Requested: a non-use variance to the rear yard setback requirement.

Site Characteristics

Location: 1727 NE Aberdeen Dr

Zoning: R-1 (Single-Family Residential)

Property Owner: Engineering Solutions, LLC

Surrounding Zoning and Uses:

North (across NE Aberdeen Dr): R-1 – single-family residential

South: R-1 – common area and single-family residential

West: R-1 – single-family residential

East (across NE Alhambra Dr): R-1 – single-family residential

Background

- November 6, 2020 – A building permit (#PRRES20203874) was issued for construction of a single-family residence on the subject property. The building permit was issued showing a covered deck meeting the minimum 30' rear yard setback.

Ordinance Requirement

Rear Yard Setback Requirements. The Unified Development Ordinance requires a minimum setback of 30 feet from the rear property line for properties zoned R-1 (UDO Article 6, Section 6.040, Table 6-3). Whereas the UDO allows uncovered decks on single-family homes to encroach 5 feet into the rear yard setback (UDO Article 6, Section 6.1350.B.5), **covered decks are required to meet the same 30 foot rear yard setback as the home.**

Existing Conditions. A single-family residence is currently under construction on the subject property. The lot backs up to a narrow 20'-wide strip of a larger common area tract. Across the 20' common area strip is another residential lot with a home developed on it.

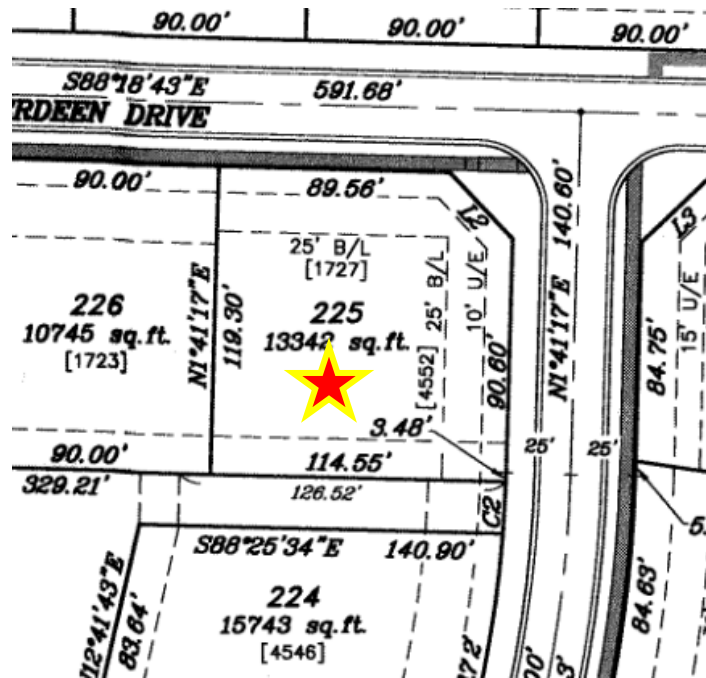


Figure 1 – Subject property with abutting common area strip to the south



Figure 2 – Subject property showing existing surrounding development.

Request. A single-family home is currently under construction on the subject property. The approved plot plan associated with the building permit shows a 9.5' deep x 15' wide covered deck at the southwest corner of the house. The covered deck meets the minimum 30-foot rear yard

setback. However, the homebuilder desires to increase the size of the covered deck by increasing its depth to 12', resulting in a 12' deep x 15' wide covered deck. The larger covered deck results in a 27.57' rear yard setback, equating to a 2.43' encroachment into the rear yard setback.

Analysis of Variance

With respect to all variances, the following is an evaluation of the criteria set forth in the Unified Development Ordinance Article 2, Sec. 2.530.B.3.:

Criteria #1 – The granting of the variance will not adversely affect the rights of adjacent landowners or residents.

Granting the variance will have some impact on the nearest property owners to the south by reducing the amount of separation between the two residences, but the relatively small encroachment is offset by the presence of a 20' wide strip of common area located between the properties. Additionally, the residence to the south is set back approximately 20' from the side property line. In total, the separation between the residences is approximately 67'. Denial of the variance would result in an approximately 70' separation between the two residences.

Criteria #2 – The granting the variance will not be opposed to the general spirit and intent of this Ordinance.

The intent of setbacks is to keep privacy and separation between uses and structures. Granting the requested variance will not necessarily be opposed to the spirit and intent of the ordinance. Without a variance, the adjacent residences would be approximately 70' apart. With a variance, the adjacent residences would be approximately 67.5' apart.

Criteria #3 – The variance desired will not adversely affect the public health, safety or general welfare.

It is not anticipated that a variance to allow the reduced setback will create an increased risk in the health, safety, morals and general welfare.

Criteria #4 – The variance requested arises from a condition that is unique to the property in question, is not ordinarily found in the same zoning district, and is not created by an action or actions of the landowner or the applicant.

The variance request stems from a desire by the homebuilder to construct a larger covered deck for the prospective homeowners. The subject property has no unusual characteristics; it is a rectangular corner lot that is 5' longer from north to south than from east to west.

Criteria #5 – Substantial justice will be done.

The subject property has no unusual or unique conditions that make it difficult to meet the required 30' rear yard setback for the covered deck. The approved plot plan that is the basis for the residence currently under construction includes a covered deck that meets the required setbacks, so the need for a variance solely stems from a desire for a larger structure. However, the presence of a 20' strip of common area still yields a substantial 67' separation between residences if a variance is granted. It is not expected that a variance of approximately 2.5' will have a significant negative impact on any surrounding property.

Analysis of Non-Use Variance

With respect to a non-use variance, the following is an evaluation of the criteria set forth in the Unified Development Ordinance Article 2, Sec. 2.530.B.2.:

Criteria #1 – Whether practical difficulties exist that would make it impossible to carry out the strict letter of the Ordinance.

It is not impossible to carry out the strict letter of the ordinance requiring a minimum 30' rear yard setback. The approved plot plan for the home currently under construction includes a 9.5' deep x 15' wide covered deck that satisfies the minimum 30' rear yard setback requirement.

In making such recommendation, the Staff has analyzed the following considerations set forth in the Unified Development Ordinance Article 2, Sec. 2.530.B.2.:

Consideration #1 – How substantial the variation is, in relation to the requirement.

The applicant requests a 2.43' variance to the 30' rear yard setback for a covered deck.

Consideration #2 – If the variance is allowed, the effect of increased population density, if any, on available public facilities and services.

Approval of the setback encroachment will not increase population and thus would have minimal, if any, effect on the available public facilities.

Consideration #3 – Whether a substantial change will be produced in the character of the neighborhood or a substantial detriment to adjoining properties is created.

Granting the variance request is not anticipated to produce a change in the character of the neighborhood. Ample separation between the subject property and the residence to the south would continue to exist if a variance is granted. Without a variance, approximately 70' between residences would exist. With a variance, approximately 67.5' between residences would exist.

Consideration #4 – Whether the difficulty can be obviated by some method, feasible for the applicant to pursue, other than a variance.

The need for a variance can be obviated by simply constructing the residence with complying covered deck as shown on the currently approved plot plan.

Consideration #5 – Whether, in view of the manner in which the difficulty arose and considering all of the above factors, the interests of justice will be served by allowing the variance.

The variance stems from a desire for a larger covered deck, not from any conditions inherent to the property itself that make it impossible or infeasible to comply with setback requirements.

Consideration #6 – Conditions of the land in question, and not conditions personal to the landowner. Evidence of the applicant's personal financial hardship unrelated to any economic impact upon the land shall not be considered.

There are no unusual or unique conditions associated with the property. The subject property is a typical rectilinear corner lot.

Attachments:

1. Board of Zoning Adjustment Application and Variance Criteria – 7 pages
2. Copy of proposed plot plan needing variance to rear setback
3. Copy of approved plot plan complying with rear setback
4. Location Map